



Appeal Decision

Site visit made on 1 October 2019

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 October 2019

Appeal Ref: APP/R0660/W/19/3233686

Buildings to the north east of Oak View, Main Road, Worleston CW5 6DH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr and Mrs Tudor against the decision of Cheshire East Council.
 - The application Ref 19/1202N, dated 8 March 2019, was approved on 9 May 2019 and planning permission was granted subject to conditions.
 - The development permitted is the demolition of existing workshop buildings and erection of a detached bungalow (resubmission of application reference 18/5756N).
 - The condition in dispute is No 5 which states that: *"Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or reenacting that order), no development (as defined by Section 55 of the Town and Country Planning Act 1990) as may otherwise be permitted by virtue of Class(es) A to E of Part 1 Schedule 2 of the Order shall be carried out."*
 - The reason given for the condition is: *"To ensure continued control over the extent of further building on the site."*
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Decision

1. The appeal is allowed and the planning permission Ref 19/1202N for the demolition of existing workshop buildings and erection of a detached bungalow (resubmission of application reference 18/5756N) at buildings to the north east of Oak View, Main Road, Worleston CW5 6DH granted on 9 May 2019 by Cheshire East Council, is varied by deleting condition No 5 and substituting it for the following condition:
 - 1) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting that order), no development (as defined by Section 55 of the Town and Country Planning Act 1990) as may otherwise be permitted by virtue of Class(es) A and E of Part 1 Schedule 2 of the Order shall be carried out.

Background and Main Issues

2. The appeal site is located within the countryside on the east side of Mile House Lane. The site is to the north-east of the main dwelling which is known as Oak View. To the north, east and south of the site is open pasture land. To the south of the site is Mile House Farm and associated barn conversions. The surrounding area is characterised by sporadic, rural development. Main Road is to the north and west of the site.
3. The Council issued a certificate of lawfulness of existing use on 15 August 2018 (Ref: 18/3011N) that the land has been utilised for workshops and storage purposes for a period of ten years or more. Since then, planning permission

was granted by the Council to demolish the existing workshop buildings and erect a detached bungalow, subject to a number of planning conditions. Central to the Council's decision was the assessment of the scheme against Policy PG6 of the Cheshire East Local Plan Strategy (CELPS) which allows for the replacement of existing buildings by new buildings not materially larger than the buildings they replace.

4. CELPS Policy PG6 does not define what 'materially larger' is. The Council point to emerging Policy RUR13 of the Publication Draft Site Allocations and Development Policies Document (SADPD) which seeks to flesh out their interpretation of this phrase, but the SADPD has only just finished a period of public consultation and has yet to be submitted for Examination in Public. Thus, its adoption is some time off and I do not know the extent of any unresolved objections. Emerging SADPD Policy RUR13 therefore carries little weight for the time being. I do, however, note that the Council considered the approved scheme to be an approximate increase of 11.4% beyond the footprint of the existing buildings. Even if, as the appellants point out, this figure is not correct, the Council concluded that the approved dwelling was not materially larger than the existing buildings.
5. The appellants wish to remove the disputed condition which was imposed on the planning permission to erect a detached bungalow as they consider that it does not satisfy the tests of being 'necessary' and 'reasonable in all other respects' as set out in paragraph 55 of the National Planning Policy Framework (the Framework). Thus, the main issue is the effect of removing the condition would have on the open countryside.

Reasons

6. The appellants are correct that there is no specific provision within the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) (as amended) that restricts the use of permitted development rights for buildings within the countryside. Nor do any of the development plan policies before me refer to the removal of permitted development rights for new development in the countryside. However, it remains to be case that planning conditions need to satisfy the six tests set out in Framework paragraph 55 and the Planning Practice Guidance (the Guidance)¹. Despite the recent changes to the Guidance, the tests for imposing planning conditions remain unchanged.
7. The Guidance explains that conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity. The scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the GPDO, so that it is clear exactly which rights have been limited or withdrawn. Area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity. The local planning authority also has powers under article 4 of the GPDO to enable them to withdraw permitted development rights across a defined area, where justified².
8. The disputed condition restricts the future use of permitted development rights

¹ Paragraph: 003 Reference ID: 21a-003-20190723

² Paragraph: 017 Reference ID: 21a-017-20190723

within Classes A to E of the GPDO. The Council wishes to retain control over the extent of any future building on the site. Their reasoning is linked to CELPS Policy PG6 and the term 'materially larger'. However, the scope of the disputed condition has not been tailored to the development permitted. As the appellants rightly point out, the site's constraints together with the flat roof design of the approved dwelling would prevent future occupants from making use of Class C of the GPDO.

9. Class B of the GPDO could be used to raise the height of the two wings by around half a metre. This would not result in a change to the footprint of the dwelling nor allow the creation of any additional rooms. Even though the dwelling, as a whole, would be higher if these rights were implemented, such works would have little consequence for the countryside. This control is not necessary or reasonable.
10. Class D of the GPDO allows for porch extensions, subject to footprint, height and siting constraints. Although a porch could potentially be built outside any of the external doors of the dwelling, the size limitations within this class do not allow for large-scale porches. Any porch added to the dwelling using permitted development rights would increase the size of the dwelling, but given the modest additional footprint involved, it is questionable whether this would mean that the dwelling would be materially larger and cause harm to the countryside, especially when it would be viewed in conjunction with the host dwelling. I do not therefore consider that restricting Class D of the GPDO is necessary and reasonable.
11. The site's countryside location alone is not justification for the disputed condition. I note the site's lawful use, but the planning permission would, if implemented, be for a different use and development. The Council, in assessing the approved scheme against CELPS Policy PG6 made a judgement that permitted development by virtue of Classes A and E have the potential to significantly increase the footprint of the dwelling. There are no percentage figures before me from either party setting out how much the footprint could be increased by if permitted development rights were utilised, beyond that already permitted.
12. It is unlikely that both classes would be used to their maximum, but due to the approved site layout, development by virtue of Class A could potentially take place to the side and rear of the dwelling. Due to the size of the rear garden (around 250m²), together with its depth, there is potential for good-sized additions to the rear of the dwelling. Individually and/or collectively these could significantly increase the footprint of the dwelling. Given the limitations of Class E, any development would be likely to the rear of the dwelling. This could, hypothetically be quite significant in terms its footprint. For both classes, any development would add to the volume of the approved dwelling.
13. The site is set back from Main Road which is lined by a mature hedgerow from the access road to the south. Views of the site are therefore glimpsed from here. This experience is not, however, universal as views across the open land from the north are possible from Main Road. The approved landscaping scheme will provide additional screening, but it would be unlikely to prevent views from public vantage points given that the site would be side onto Main Road to the north. I recognise that the approved scheme would retain a number of existing trees. A planning condition has been imposed to ensure their wellbeing during the dwelling's construction, but as they are not protected, these trees could be

removed in the future, regardless of the appellants intentions. Thus, they may not restrict future development in the way that the appellants say.

14. In reaching their decision, the Council decided that the approved dwelling was not materially larger than the existing buildings. However, the Council say that this was close to the limit of what they would have accepted. Thus, there are sound reasons linked to CELPS Policy PG6 and the countryside which mean that it may have been appropriate to refuse planning permission without condition No 5 insofar as Classes A and E.
15. However, that is not the end of the matter as CELPS Policy PG6 3 iv. provides an exception for extensions to existing dwellings where the extension is not disproportionate to the original dwelling. The term 'disproportionate' is not defined and therefore a planning judgement needs to be made when considering extensions. This exception does not therefore mean that any and every extension would be policy compliant. Given the potential significant increases through Classes A and E, there is no certainty that future extensions would not be disproportionate. As such, it is reasonable that planning permission is applied for.
16. My attention has been drawn by the appellants to a series of appeal decisions³. While I note the findings of these decisions, I do not have copies of the plans that relate to these schemes before me. Furthermore, the Guidance has since been revised by removing the phrase 'exceptional circumstances' and replacing it with 'may not'. As such, I have considered the proposal on its own merits.
17. Having regard to the other tests set out in Framework paragraph 55, I consider that the disputed condition is precise, enforceable, relevant to planning and relevant to the development to be permitted.
18. For the reasons set out above, I conclude that condition No 5 is in the main necessary and reasonable. The complete removal of condition No 5 would be unwarranted having regard to CELPS Policy PG6. However, the removal of the Classes B, C and D permitted development rights are not necessary or reasonable. Hence, I shall delete the originally worded condition and replace it with one that only refers to the removal of the Classes A and E permitted development rights. The effect is to allow the appeal.

Other matter

19. The appellants evidence refers to in some detail the site's accessibility and proximity to services and facilities. Even if the Council referred to this within its Officer Report as being a negative factor, planning permission was still granted. Furthermore, the reason for the disputed condition is not linked to concerns about accessibility or proximity to services and facilities.

Conclusion

20. For the reasons set out above, I conclude that the appeal should be allowed.

Andrew McGlone

INSPECTOR

³ Appeal Decision Refs: APP/P3420/A/12/2178068; APP/Q5300/A/14/2217664; APP/M9496/A/14/2219276; and APP/P3420/W/18/3201127